

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

July 26, 2013

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, on July 26, 2013. Members present were Chairman Barry Stumbo, Noel White, Joseph Smith, Janice Meyer, James Griggs and Thomas Glover. Kathryn Moore was absent. Others present were Chuck Saylor, Division of Engineering; Jeff Neal, Division of Traffic Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones, Department of Law. Staff members in attendance were Jimmy Emmons and Stephanie Cunningham.

- II. **APPROVAL OF MINUTES** - The Chair announced that there were no minutes to consider at this time.

**Swearing of Witnesses** – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
2. **No Discussion Items** - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

Mr. Emmons informed the Board that the required notice for all of the applications on today's agenda including the signage had been posted.

**ABBREVIATED HEARINGS:**

- a. **V-2013-44: MIKE KERWIN HOMES** - appeals for a variance to reduce the required side yard from 7 feet to 5 feet in order to complete construction of a residential addition in a Two Family Residential (R-2) zone, at 26 Mentelle Park (Council District 3).

**The Staff Recommends: Approval**, for the following reasons:

- a. Reducing the required side yard from 7' to 5', allowing an addition and covered porch to be constructed as depicted on the site plan, should not adversely affect the public health, safety, or welfare, nor alter the character of the area, as the wall plane will average at about 6 feet from the property line and will have relief due to the existing 2-story bay window area on the side of the house.
- b. The unique circumstance that applies to this property is that the subdivision was built in the early 1900s, which pre-dates the Zoning Ordinance. The applicant cannot viably shift the proposed addition because of an existing driveway on the northwestern property line that serves a detached garage in the rear of the structure, which has been in this location since at least 1920.
- c. The requested variance will not be an unreasonable circumvention of the Zoning Ordinance, in so much as the addition is in an area with an average 6' wide side yard; and, in no circumstance, will the proposed side yard be less than 5', both of which are allowable for most homes in residential zones.
- d. Strict application of the Zoning Ordinance would result in a hardship for the appellant, and would result in either a smaller addition, which will not be of sufficient size to fill the need for the improvement by the appellants; or a reduction in the driveway width, which would likely make maneuverability difficult.
- e. There is not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance by the appellants, as a building permit has only been applied for and construction of the improvements has not yet begun.

**This recommendation of approval is made subject to the following conditions:**

1. The addition will be built in accordance with the submitted site plan and application.
2. All necessary building permits shall be obtained prior to construction activities.
3. The use of the structure shall be limited to no more than 4 bedrooms.

Chairman Stumbo asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. Robert C. Jones was present representing the appellant, and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Since there were no questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Mr. Griggs, seconded by Ms. White, and carried unanimously (Moore absent) to approve **V-2013-44: MIKE KERWIN HOMES** - an appeal for a variance to reduce the required side yard from 7 feet to 5 feet in order to complete construction of a residential addition in a Two Family Residential (R-2) zone, at 26 Mentelle Park, as recommended by the staff and subject to the three conditions outlined by staff.

- b. **C-2013-42: TONI E. SCHUCK** - appeals for a conditional use permit to expand an existing golf driving range (add accessory storage buildings) in the Agricultural Rural (A-R) zone, at 4440 Athens-Boonesboro Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. A driving range has been in place at this location for more than two decades, with no indications of any significant disturbances to the surrounding rural properties. Minor expansions to this use several years ago by the previous owner(s) (involving putting greens and sand trap improvements) have not caused any problems or concerns that have generated any complaints, and there is no indication that the placement of the requested accessory buildings will cause issues.
- b. The placement of three new accessory structures will provide a covered and secure area for the driving range to store valuable equipment that is necessary for the modern operation of this approved use. It will also allow the driving range to continue operation during rain or other inclement weather.
- c. Lighting and signage are currently controlled for this use, and will continue as such in the future.
- d. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The driving range shall be operated in accordance with the existing application and a revised site plan that will be revised to identify all existing off-street parking areas, the proposed accessory structures and their uses, sand traps and putting greens on the subject property. The areas operated by the plant nursery on this property shall only be noted, as they are not a part of this conditional use permit request.
2. A Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection within 60 days of action by the Board, following required revisions to the current site plan.
3. The facility shall only operate during daylight hours, and shall not install lighting directed on the driving range, putting green(s) or sand trap areas.
4. The use of this driving range should be limited to no more than 40 tee boxes, unless parking over and above 42 spaces can be documented to the Division of Traffic Engineering, as well as the Division of Planning, and the design of that parking approved by Traffic Engineering.
5. Storm water management shall be provided in accordance with the requirements of the adopted Engineering Manuals, or as otherwise deemed acceptable by the Division of Engineering based on any prior permitting.
6. Sewage treatment shall be provided in accordance with the requirements of the Board of Health.
7. The existing 4' by 8' free-standing sign shall not be enlarged for use by this facility, and shall not be relocated closer than 25' to the right-of-way fence. All other signage on this property controlled by the golf driving range shall be subject to the requirements of Article 17 of the Zoning Ordinance.
8. Only incidental retail sales and rentals are allowed at the pro shop, for items such as golf balls, golf clubs, golf gloves and tees.

Chairman Stumbo asked whether there were objectors to the subject appeal present. There was no response.

Representation – Ms. Toni Schuck, appellant, was present. She indicated that she had reviewed the recommended conditions and agreed to abide by them.

Since there were no questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Smith, and carried unanimously (Moore absent) to approve **C-2013-42: TONI E. SCHUCK** – an appeal for a conditional use permit to expand an existing golf driving range (add accessory storage buildings) in the Agricultural Rural (A-R) zone, at 4440 Athens-Boonesboro Road, for the reasons provided by the staff, and subject to the eight recommended conditions.

- c. **C-2012-48: DAVID ROMERO** - appeals for a 6-month review of a conditional use permit approved by the Board for live entertainment accessory to a restaurant in a Neighborhood Business (B-1) zone, at 4379 Old Harrodsburg Road (Council District 9).

In August of 2012, the Board approved a conditional use permit for live entertainment. One of the conditions for approval was a 6-month review of the use after issuance of a Certificate of Occupancy, in order to determine if surrounding property owners had experienced any adverse impacts from the live entertainment, as well as to determine compliance with the imposed conditions. The conditions to be reviewed are as follows:

1. The restaurant with live entertainment and dancing shall be established in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits, including a Zoning Compliance Permit and an Occupancy Permit, shall be obtained from the Divisions of Planning and Building Inspection prior to opening the restaurant.
3. Any music provided on the patio shall not be amplified.
4. A note reflecting action of the Board shall be placed on any amended Final Development Plan for the subject property.
5. Documentation that there is enough available parking during the hours of operation of this use to meet the minimum required parking, shall be provided prior to the issuance of a Zoning Compliance Permit by the Division of Planning.
6. These uses shall be soundproofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance or disturbance to the surrounding neighborhood.
7. The Board shall review this use six (6) months after issuance of a Certificate of Occupancy.
8. This conditional use shall become null and void should the appellant no longer operate at this location.

Chairman Stumbo stated that this next item involves a request for a 6-month review of a conditional use permit that the Board approved for live entertainment at a restaurant at 4379 Old Harrodsburg Road. The Chair asked for an update from the staff. Mr. Emmons noted that the staff had not received any complaints. He said that the staff had visited the site during the day, but not in the evening during the live entertainment. He added that the staff had not seen where there were any problems or concerns about this use. Staff recommended that the conditional use go on with its annual review, just as all conditional use permits are required to do. He stated that if there were any questions from the Board, the staff would try to answer them.

Chairman Stumbo asked if this is the normal procedure for this type of request. Mr. Marx noted that the requirement is to check once a year, and the staff will continue to do so. Chairman Stumbo asked if the Board needed to take action on this request. Mr. Emmons replied affirmatively.

Representation – Mr. David Romero, appellant, was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Since there were no questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. White, seconded by Ms. Meyer, and carried unanimously (Moore absent) to approve **C-2012-48: DAVID ROMERO** – an appeal for a 6-month review of a conditional use permit approved by the Board for live entertainment accessory to a restaurant in a Neighborhood Business (B-1) zone, at 4379 Old Harrodsburg Road, subject to the original conditions imposed by the Board.

- d. **C-2013-43: TRINITY CHRISTIAN ACADEMY** - appeals for a conditional use permit to continue operation of a preschool accessory to a church in an Agricultural Urban (A-U) zone, at 3900 Rapid Run Drive (Council District 8).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the proposed preschool will only be for a small fraction of the number of children enrolled in the Trinity Christian Academy located in these same facilities.
- b. All necessary public facilities and services are adequate for the proposed use, and no new buildings or parking are required for this use.

This recommendation of approval is made subject to the following conditions:

1. The preschool shall be operated in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection within one month of the approval by the Board of Adjustment.
3. All parking areas and access shall be paved, with spaces delineated, and landscaped/ screened as would

- be required for churches in residential zones, in accordance with Articles 16 and 18 of the Zoning Ordinance.
4. All pole lighting for off-street parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward and away from adjoining residential properties.
  5. The layout of the parking areas and access to Rapid Run Drive shall be subject to approval by the Division of Traffic Engineering.
  6. A storm water management plan shall be implemented in accordance with the adopted Engineering manuals, subject to acceptance by the Division of Engineering.
  7. All existing tree lines and fencing along the church property boundaries shall be preserved and maintained to the greatest extent possible.

Representation – Ms. Shella Schwartz-Franklin, was present on the behalf of the applicant, Trinity Christian Academy.

Ms. Meyer asked if the pre-school has just been operating and now they were to trying to get in compliance. Ms. Franklin said that this was correct. Ms. Meyer then asked if Ms. Franklin just didn't know she needed a permit. Ms. Franklin said that this is correct, noting that this is their 25<sup>th</sup> year in operation.

Chairman Stumbo asked if the staff had anything, from their perspective, that they would like to add to this. Mr. Emmons stated that they had mentioned everything of importance in the staff report, and that this is not a case where the applicant has been approved for nearly 25 years for both a Church and a School for academic construction. Mr. Emmons also noted that there have not been any zoning enforcement issues. They were operating the pre-school in conjunction with their school of their academic instruction, and they were asking for a letter from the staff for zoning compliance as part of the state approval for the pre-school. He indicated that the Zoning Ordinance lists pre-schools listed separately from schools for academic instruction, and the staff could not find in the Church's 25-year history that the Board have ever approved the pre-school use. He said that there are no new buildings that have been built in conjunction with this proposed use. Mr. Emmons noted there are currently 16 students enrolled in pre-school and 250 on the campus, overall. The staff has no problem with this use, and is recommending approval of this pre-school in order to essentially "clean up" their paperwork. Mr. Emmons noted that the staff recommended approval with seven conditions, mostly re-wording existing conditions for the school.

Chairman Stumbo asked Ms. Franklin if she agreed to abide by these seven conditions. Ms. Franklin agreed. Chairman Stumbo asked the Board if there were any questions for the applicant. There was no response.

Opposition - Mr. Gayle Terry, who lives at 1347 Kings Court (since 1998), said that he has no problem with the school. He stated that his concern is where they used to have a 4-foot wide barrier. He noted when the last time the school was before the BOA for a gymnasium, former Mayor Jim Amato, who represented the Church, stated that the building was only going to be a 2-story building, which then turned into a gym. Mr. Terry indicated since the barrier behind the Church has been removed, they have experienced vandalism, due to cut-throughs, and a student was assaulted on campus. Mr. Terry repeated that he has concerns about the boundary between the properties and asked the Church to put up a fence. He noted that currently, there is just an old fence separating his property from the school property. He said that noise is no concern, but he is mainly concerned about having things thrown over the fence, such as rocks and other items. He said he is asking the Church to monitor and better supervise the kids. Mr. Terry said that he took a vacation day to come to the meeting to address concerns. He said that the school has been a good neighbor overall. Mr. Terry went on to state that, since the barrier was destroyed between them, it was like the safety barrier between his property and the Church had been removed.

Discussion – Chairman Stumbo asked if there were any questions. Ms. Meyer asked Mr. Terry what he saw as a solution to the problem. Mr. Terry stated he is asking for a fence or some separation from the Church property. He noted that the kids climb over the existing fence, which is too easy to climb, and are breaking some of the boards on the fence because it is an old, rickety fence.

Mr. Griggs asked the staff if there was an aerial photo of this area, which Mr. Emmons displayed on the overhead projector. Mr. Terry indicated the location of his house on the aerial photo. He noted that the tree line is not as thick as it used to be. He also indicated they used to have problems with excessive lighting on the Church property; however, the Church has been good enough to recede the lights quite a bit. Mr. Terry again noted that the trees in the photo were not as thick now as they were about 3 or 6 years ago.

Chairman Stumbo referred to condition #7 regarding the maintenance of the fencing. He asked Mr. Terry if what he is asking for is permanent fencing. Mr. Terry replied affirmatively, and noted that he has asked the Church before and they agreed to it, but it has never happened. He stated that problems flare up from time to time, but there are not constant problems. Chairman Stumbo asked if a condition could be added for permanent fencing, or should this be addressed as a separate issue.

Mr. Griggs inquired as to what the Zoning Ordinance requires as a buffer between a Church and a residential area. He also asked, when the Church added the gym, if there were some buffer requirements that weren't being adhered to. Mr. Marx said that he could not answer if there were buffer requirements as part of the prior BOA cases, but he could research that. He noted that ordinarily, buffers are required regardless of what the BOA does, such as if there is a Zone-to-Zone screening requirement along a property border, but it is not always required, depending on how the zones match up. He noted that it would be best for the staff to commit to research what was required from prior cases. He indicated that there was no need to hold up action on today's case, and they could advise Mr. Terry of their decision.

Mr. Griggs advised Ms. Franklin of his concerns about the stated problems, and asked about prioritizing this problem. Ms. Franklin stated she was unaware of the problem, and will address it with the Church and the school as quickly as possible. Chairman Stumbo then asked were there any other questions from the Board. There was no response.

Action – A motion was made by Ms. Meyer, seconded by Mr. Smith, and carried unanimously (Moore absent) to approve **C-2013-43: TRINITY CHRISTIAN ACADEMY** - an appeal for a conditional use permit to continue operation of a preschool accessory to a church in an Agricultural Urban (A-U) zone, at 3900 Rapid Run Drive, for the reasons recommended by the staff, and subject to the seven conditions as outlined by staff.

- B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

D. **Conditional Use Appeals**

None Remaining

E. **Administrative Review**

None Remaining

- IV. **BOARD ITEMS** - The Chair announced that any items a Board member wishes to present would be heard at this time. There were no such items.

- A. **REQUEST FOR CLOSED SESSION** – At this time the Chair advised the Board members there is some activity on current litigation, and they would need to go into closed session. He said that there is a need to discuss the ongoing legal issues regarding Boone Creek. The Chair asked Ms. Jones if there was anything formal required. The response was inaudible

Action – A motion was made by Mr. Griggs pursuant to KRS 61.810 (1C) to go into closed session to discuss the matter of pending litigation. The motion was seconded by Ms. White, and carried unanimously (Moore absent) to enter into a closed session.

*The Chairman declared a closed session at 2:28 p.m. and reconvened the meeting at 2:45 p.m.*

- V. **STAFF ITEMS** – There were no items a Staff member wished to present at this time.
- VI. **NEXT MEETING DATE** - The Chair announced that, due to the Labor Day Holiday, the next meeting will be on August 23,

2013, which is one week earlier than usual.

VII. **ADJOURNMENT** - There being no further business, the Chair declared the meeting adjourned at 2:46 p.m.

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Barry Stumbo, Chair

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James Griggs, Secretary